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Docket No. FWS-R5-ES-2021-0163

Public Comments Processing
Attn: FWS-R5-ES-2021-0163
U.S. Fish and Wildlife Service
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Re: *Endangered Species Status for Tricolored Bat*, 87 Fed. Reg. 56381 (September 14, 2022), Docket No. FWS-R5-ES-2021-0163

To Whom It May Concern:

The 25 undersigned forestry associations appreciate the opportunity to submit the following comments on the U.S. Fish and Wildlife Service's ("Service") proposed rule to list the tricolored bat (*Perimyotis subflavus*) as an endangered species. *Endangered Species Status for Tricolored Bat*, 87 Fed. Reg. 56381 (September 14, 2022), Docket No. FWS-R5-ES-2021-0163 ("Proposed Rule"). In addition to the comments below, we fully endorse and adopt comments provided by the National Council for Air and Stream Improvement, Inc. (NCASI), regarding the Proposed Rule, and do not repeat them here.

The National Alliance of Forest Owners (NAFO) is a national advocacy organization advancing federal policies that ensure private working forests provide clean air, clean water, wildlife habitat and jobs through sustainable practices and strong markets. NAFO member companies own and manage more than 46 million acres of private working forests. The additional undersigned organizations conduct forestry programs on behalf of their members, representing tens of millions of additional acres of private working forests across the country. Several NAFO members and the undersigned organizations manage working forests within the range of the tricolored bat; in total there are over 353 million acres of private forestland in states where these bats are found.

The Benefits of Private Working Forests

Approximately 360 million acres – or nearly 70% – of working forests in the U.S. are on private land, owned by individuals, families, small and large businesses, and Americans who invest in working forests. Private working forests are a critical nature-based solution to many of our most pressing environmental challenges. According to an analysis published in [Frontiers in Ecology and the Environment](#), 60% of at-risk species occur on privately owned forestland, making them critical to wildlife conservation. Actively managed working forests provide a full range of structural variation, including early successional conditions, open canopy conditions, and forested riparian areas protected using state-approved water quality best management practices (BMPs). Collaboration between private forest owners and state and federal agencies is proven to drive conservation outcomes, often precluding the need for regulatory actions, and aiding in species recovery efforts. Assurances for these outcomes are provided for many working forests through independent, third-party sustainable forestry certification of management and fiber sourcing activities.

Private forest owners have a long and successful track record of managing forests for long-term productivity and providing important benefits for air and water quality, wildlife habitat, and rural economies. Forest owners throughout the country are also engaging in successful conservation efforts through NAFO's [Wildlife Conservation Initiative](#) (WCI), a collaborative partnership with the Service, NCASI, and other stakeholders to conserve at-risk and endangered species. The WCI advances a shared understanding of modern forest management and carries out research and management actions integral to species conservation. Through the WCI, private forest owners provide access, data, and information to help inform management and decision-making and improve outcomes for both forest owners and species at greater scale. The Service should continue to recognize and cite the conservation value of working forests and importance of collaborative conservation in the tricolored bat final rule and other forthcoming agency actions.

Comments

1. Forest management and silviculture are vital to the long-term survival and recovery of the tricolored and other bat species.

Private working forests represent a dominant land use within the range of the tricolored bat and active forest management at the landscape scale provides long-term benefits for the tricolored bat (Morris et al. 2010, Brooks 2009, Vindigni et al. 2009, and Perry and Thill 2007), and for bat communities in general (e.g., Bender et al. 2015). For example, in partially harvested stands, tricolored bats have been found to roost almost exclusively (90% of roosts) in riparian buffers (Perry et al. 2007). Additionally, riparian areas have been shown to be important bat foraging habitat for tricolored bats (Menzel et al. 2005), which highlights the importance of streamside management zones, one of many state approved BMPs designed to protect water quality. Actively managed forest landscapes support year-round habitat conditions for tricolored bats, including retaining trees in the streamside management zones (SMZs), which are important for tricolored bat foraging and summer roosting (Perry et al. 2007; O'Keefe et al. 2009), and important heterogeneity within stands and across landscapes (Bender et al. 2021). We urge the Service to include in the final rule the literature documenting the benefits of modern forest management as part of the best scientific and commercial data available for the tricolored bat.

The Service notes in the Proposed Rule: "Depending on the type and timing of activities, forest management can be beneficial to bat species (e.g., maintaining or increasing suitable roosting and foraging habitat)." 87 Fed. Reg. at 56387. This is consistent with the Service's finding regarding the northern long-eared bat (NLEB). 87 Fed. Reg. 16442, 16448 (March 23, 2022). The Service has also noted with regard to bats that "forest management and silviculture are vital to the long-term survival and recovery of the [NLEB] species." 81 Fed. Reg. 1900, 1909 (January 14, 2016). We urge the Service to maintain this approach for the tricolored bat final rule and encourage active forest management in a manner that continues to provide conservation value.

2. Habitat loss is not a key stressor at the species level and is not limiting.

Sustainably managed forests are critical to the survival of the tricolored bat, and the Service correctly identifies that the tricolored bat is experiencing significant declines due to white-nose syndrome (WNS), a fungal disease. In the Proposed Rule, the Service affirms that "Although there are other stressors affecting tricolored bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen." 87 Fed. Reg. at 56385. Later, the Service further explains "forested habitat loss is not a major driver of the species' status, and suitable forest habitat is not limiting for tricolored bat now nor is it likely to be limiting in the future." 87 Fed. Reg. at 56391.

We support this assertion that the true threat to the species' survival and recovery is WNS and that forest conditions are not limiting for these populations. In the final rule, the Service should explicitly recognize that forest area has generally been stable or increasing since 1953 throughout the tricolored bat range (Oswalt et al. 2019; Table 3) and cite the additional scientific evidence demonstrating the compatibility of active forest management with maintaining forest conditions needed by tricolored bats. Managed forests support year-round habitat conditions for the tricolored bat, as it provides diverse structure across a landscape, including in recently harvested areas and SMZs maintained as part of state-approved water quality BMPs.

A large body of scientific literature indicates that forest conditions are not limiting as referenced in NCASI's comments, and forest management helps to maintain forest conditions required by the tricolored bat across landscapes and provides conservation benefits to the species. As such, we encourage the Service to review material provided by NCASI and expressly incorporate it into the final rule as a part of the best scientific and commercial data available supporting this fact. The Service needs to reference both the ability of forest management to *retain* conditions and to *improve* forest conditions, which will assist in long-term survival and recovery of the species.

In the final rule, NAFO strongly urges the Service to directly recognize the conservation benefits of modern forest management, rather merely noting that habitat is not now or likely to become a limiting factor as a basis for not designating critical habitat to ensure they are using the best scientific and commercial data available when making a decision. Additionally, the Service should continue to support proactive conservation efforts like the WCI, which produce win-win outcomes for at-risk and listed species, for regulatory and conservation communities, and for private forest owners.

3. The Service should explicitly recognize that modern forest management activities are not likely to cause a take.

As noted above, the Proposed Rule lists "(3) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions" as an activity that may potentially result in a violation of the prohibition on take 87 Fed. Reg. at 56390. Some of the specific activities listed are normal forestry operations that do not require authorization to conduct. Moreover, normal forestry operations can create and maintain forest conditions beneficial for tricolored bats. NAFO urges the Service to clearly state that normal forest management and harvesting activities are not a threat to the long-term viability of the tricolored bat.

The Service has previously recognized the value of sustainable forest management to ongoing bat conservation efforts. For example, the Service issued an ESA section 4(d) rule for the NLEB that exempted normal forest management from take liability if certain buffers were maintained. 81 Fed. Reg. 1900 (January 14, 2016). More recently, the Service recognized "While there is always the potential to affect a bat, very few bats are expected to be directly affected by forestry practices each year, due in large part to the small amount of land that will be harvested during the active season for covered bats and the current low populations of bats." *Draft Lake States Forest Management Bat Habitat Conservation Plan*, p. E-8, see also Chapter 4.

We request that the Service expressly recognize in the final rulemaking that forest management will not negatively impact the species' conservation and recovery efforts and is necessary for long-term survival and recovery of the tricolored bat. Because, as stated in the Proposed Rule, "Depending on the type and timing of activities, forest management can be beneficial to bat species (e.g., maintaining or increasing suitable roosting and foraging habitat" 87 Fed. Reg. at 56387. While a specific forest management activity may cause incidental take, there is no reasonable certainty that this will occur if forest owners and managers continue to follow the principles of the NLEB section 4(d) rule. This of course would not exempt forest management from the prohibition on incidental take but would provide guidance for future development of streamlined conservation agreements that can provide incidental take protections. Further and most importantly, continued recognition of the benefits of sustainably managed forests for the conservation of the tricolored bat will encourage and reward proactive management practices beneficial to this species and result in a clear conservation benefit for other bat species.

Conclusion

Given the Service's recognition of the value of private working forests for conservation of at-risk and listed species, we urge the Service to state in the final rule its willingness to work collaboratively with private forest owners for conserving bat species, including the tricolored bat. Additionally, where appropriate, the Service should work with forest owners to develop streamlined agreements that provide regulatory assurances to landowners and recognize that modern forest management provides conservation benefits for bat species affected by WNS.

We appreciate the opportunity to provide the Service with the perspective of private forest owners in the context of the Proposed Rule. We ask the Service to apply these comments, along with those from NCASI, in its final rule.

Respectfully,



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Submitted on behalf of:

Alabama Forestry Association
Arkansas Forestry Association
Association of Consulting Foresters
Empire State Forest Products Association
Florida Forestry Association
Forest Landowners Association
Forest Resources Association
Forestry Association of South Carolina

Indiana Forestry and Woodland Owners Association
Louisiana Forestry Association
Massachusetts Forest Alliance
Maine Forest Products Council
Michigan Forest Products Council
Minnesota Forest Industries
Mississippi Forestry Association

National Alliance of Forest Owners
National Woodland Owners Association
New Hampshire Timberland Owners
Association
North Carolina Forestry Association
Pennsylvania Forest Products Association

Society of American Foresters
Southeastern Lumber Manufacturers
Association
Tennessee Forestry Association
Virginia Forestry Association
West Virginia Forestry Association

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